

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 9:23-CV-80644-RLR

FREDERICK H. MILLER,

Plaintiff,

v.

NAVY FEDERAL CREDIT UNION and
EXPERIAN INFORMATION SOLUTIONS,
INC.,

Defendant.

DEFENDANT NAVY FEDERAL CREDIT UNION'S
STATEMENT OF MATERIAL FACTS

Pursuant to Rule 56, Fed. R. Civ. P., Local Rule 56.1, and the Court's Order Setting Status Conference, Calendar Call, Pre-Trial Deadlines, and Trial Date, Order of Requirements, Order of Reference to Magistrate Judge, and Order of Reference to Mediation [ECF No. 24], defendant Navy Federal Credit Union ("Navy Federal") hereby file this Statement of Material Facts in support of its Motion for Summary Judgment filed concurrently herewith.

1. Navy Federal is a national credit union and is a furnisher of information subject to the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et. seq.* (Am. Compl. [ECF No. 39] ¶¶ 5, 49; Am. Answer [ECF No. 57] ¶¶ 5, 49).

2. In July 2022, a Navy Federal credit card account (the "Account") was opened in the name of plaintiff Frederick H. Miller ("Plaintiff") as a result of identity theft. (Am. Compl. ¶ 24; Declaration of Lisa Paulson (hereinafter the "Paulson Decl.," attached hereto as **Exhibit 1**) at ¶ 8).

3. On November 19, 2022, Plaintiff discovered the Account was reporting as past due on his credit report and disputed the Account with Experian Information Solutions (“Experian”) and TransUnion LLC (“TransUnion”), which are two of the three major credit reporting agencies (each a “CRA”). (Am. Compl. ¶¶ 23, 27; Deposition of Frederick Miller (hereinafter the “Miller Dep.,” attached hereto as **Exhibit 2**) at 12:24-13:2, 24:20-25, 25:6-14).

4. When a consumer initiates a dispute with a CRA regarding an account, the CRA submits the information provided by the consumer to the furnisher who provided any item of information in dispute via an Automated Credit Dispute Verification form (an “ACDV”). (Paulson Decl. ¶ 10).

5. In each ACDV, the CRA inputs a Dispute Code regarding the nature of the dispute and also adds a Control Number to identify the dispute. (Paulson Decl. ¶ 11; Deposition of Lisa Paulson (hereinafter the “Paulson Dep.,” attached hereto as **Exhibit 3**) at 59:12-17).¹

6. Navy Federal reviews, investigates, and processes each ACDV based upon the Dispute Code listed on the ACDV by the CRA. (Paulson Decl. ¶ 12).

7. When Navy Federal sends an ACDV response to a CRA through the e-OSCAR application, e-OSCAR generates a notification to the other CRAs with the response information. (Paulson Decl. ¶ 13).

¹ Plaintiff filed a Motion for Leave to File Under Seal [ECF No. 79], seeking, in pertinent part, to file the Paulson deposition transcript under seal due to confidential commercial information contained therein. Navy Federal joined in the request to file the Paulson deposition transcript under seal. Because the Paulson deposition transcript is the subject of the pending Motion for Leave to File Under Seal, Navy Federal has not attached the Paulson deposition transcript and instead has filed a slipsheet for this exhibit.

The November 19 ACDV

8. On November 19, 2022, Navy Federal received an ACDV from Experian regarding Plaintiff's Account (the "November 19 ACDV"), in which Experian listed the Dispute Code as "1." (Paulson Decl. ¶ 14, Ex. A).

9. An ACDV Dispute Code of 001 (or 1) means "Not his/hers. Provide or confirm complete ID." An ACDV with a Dispute Code of 001 is not an identity theft claim or a fraud claim, as there are separate Dispute Codes for identity theft (103) and fraud (104). (Paulson Decl. ¶ 15).

10. When Navy Federal receives an ACDV with a Dispute Code of 001, Navy Federal conducts an investigation to determine whether the consumer's information provided in the ACDV (*i.e.*, name, Social Security Number, date of birth) is consistent with the information contained in Navy Federal's internal records. If the information is accurate, Navy Federal will respond to the ACDV with a Response Code of "01: Account information accurate as of date reported" or a Response Code of "23: Disputed information is accurate. Updated account information unrelated to the dispute." If the information is not accurate, Navy Federal will respond to the ACDV with a Response Code of "21: Updated disputed account information only." or a Response Code of "22: Updated disputed account information and additional account information was also updated." Navy Federal will include updated consumer information (*i.e.*, name, Social Security Number, date of birth) in the ACDV response. (Paulson Decl. ¶ 16).

11. If an ACDV with a Dispute Code of 001 also has images attached to it indicating that the consumer is claiming identity theft/fraud, such as a police report or a Federal Trade Commission Identity Theft Report, Navy Federal treats the ACDV as if it had been submitted with

a Dispute Code of “103: Claims true identity fraud/account fraudulently opened.” (Paulson Decl. ¶ 17).

12. Upon receipt of the November 19 ACDV with a Dispute Code of 001, Navy Federal investigated the dispute by reviewing all of the information provided by Experian in the November 19 ACDV, including the name, address, date of birth, and Social Security Number, and comparing it to the information in Navy Federal’s records. (Paulson Decl. ¶ 18).

13. Based on Navy Federal’s investigation, the name, date of birth, and Social Security Number reflected in the November 19 ACDV were accurate and consistent with Navy Federal’s records. The address included in the November 19 ACDV differed from the address in Navy Federal’s records, which was reflected in Navy Federal’s response to the November 19 ACDV. A difference of address could be due to many reasons, such as a member moving or a different mailing address, and thus Navy Federal will still confirm that account information is accurate if there is a difference of address between an ACDV and Navy Federal’s internal records. (Paulson Decl. ¶ 19).

14. On December 2, 2022, Navy Federal provided its response to the November 19 ACDV to Experian with a Response Code of “23: Disputed information is accurate. Updated account information unrelated to the dispute.” In its response to the November 19 ACDV, Navy Federal updated the compliance condition code (XC: Completed investigation of FCRA dispute – consumer disagrees), the type of account (R: Revolving (open-end account)), and the type of interest (V: variable/adjustable). (Paulson Decl. ¶ 20).

The Identity Theft ACDVs

15. On December 19, 2022, Navy Federal received an ACDV from Experian regarding Plaintiff’s Account (the “December 19 ACDV”), in which Experian listed the Dispute Code as

“103: Claims true identity fraud, account fraudulently opened. Provide or confirm complete ID.” (Paulson Decl. ¶ 21, Ex. B). The Control Number for the December 19 ACDV was 2118769848001. (*Id.*).

16. An ACDV Dispute Code of 103 means “Claims true identity fraud/account fraudulently opened.” When Navy Federal receives an ACDV with a Dispute Code of 103, the information contained in the ACDV, along with any associated images attached to the ACDV, is transmitted to the identity theft group within the security department of Navy Federal for a detailed and thorough investigation for identity theft/fraud. (Paulson Decl. ¶ 22).

17. The December 19 ACDV was the first ACDV received by Navy Federal concerning Plaintiff’s Account that listed an identity theft Dispute Code. (Paulson Decl. ¶ 23).

18. On December 28, 2022, Navy Federal received another ACDV from Experian (the “December 28 ACDV”) regarding Plaintiff’s Account, which also listed the Dispute Code as “103: Claims true identity fraud, account fraudulently opened. Provide or confirm complete ID.” (Paulson Decl. ¶ 24, Ex. C).

19. The FCRA Relevant Information section of the December 28 ACDV stated “Previously Control No. 2118769848,” which is the first 10 digits of the Control Number for the December 19 ACDV and thus indicated that the December 28 ACDV was associated with the dispute evidenced by the December 19 ACDV. (Paulson Decl. ¶ 25, Ex. C).

20. The December 28 ACDV included associated images that Plaintiff provided to Experian – namely, a one-page letter from Plaintiff to Experian along with a Federal Trade Commission Identity Theft Report completed and signed by Plaintiff (the “FTC Affidavit”). (Paulson Decl. ¶ 26, Ex. C).

21. In the FTC Affidavit, Plaintiff swore, under penalty of perjury, that he was “a victim of identity theft” and that the Account was affected by the crime. (Miller Dep. 39:14-20; Paulson Decl. Ex. C).

22. Navy Federal reviewed all relevant information provided by Experian in the December 19 ACDV and the December 28 ACDV, including the name, address, date of birth, and Social Security Number, and compared it to the information in Navy Federal’s records. (Paulson Decl. ¶ 27).

23. Navy Federal also reviewed the one-page letter from Plaintiff to Experian and the FTC Affidavit that were attached as Associated Images to the December 28 ACDV. This review is evidenced by the “Yes” in the “Image Accessed Indicators” field on the December 28 ACDV, which field is automatically populated with the word “Yes” once the credit bureau dispute specialist has reviewed the associated images attached to the ACDV. (Paulson Decl. ¶ 27, Ex. C).

24. After this initial review in connection with the December 19 ACDV and the December 28 ACDV, Navy Federal responded to Experian with Response Codes of “01: Account information accurate as of date reported” for each ACDV. (Paulson Decl. ¶ 27, Exs. B and C).

25. On January 10, 2023, Navy Federal received an ACDV from TransUnion (the “January TransUnion ACDV”) regarding Plaintiff’s Account, which also listed the Dispute Code as “103: Claims true identity fraud, account fraudulently opened. Provide or confirm complete ID.” (Paulson Decl. ¶ 28, Ex. D).

26. The January TransUnion ACDV was the only ACDV regarding Plaintiff’s Account that Navy Federal received from TransUnion. (Paulson Decl. ¶ 29).

27. Navy Federal reviewed all relevant information provided by TransUnion in the January TransUnion ACDV, including the name, address, date of birth, and Social Security Number, and compared it to the information in Navy Federal's records. (Paulson Decl. ¶ 30).

28. After this initial review in connection with the January TransUnion ACDV, Navy Federal responded to TransUnion with a Response Code of "23: Disputed information accurate. Updated account information unrelated to the dispute." In its response to the January TransUnion ACDV, Navy Federal updated the Account Status to "80: Account 90-119 days past the due date." (Paulson Decl. ¶ 30, Ex. D).

29. On or about January 30, 2023, Navy Federal's identity theft group within the security department honored Plaintiff's claim of identity theft, and the Account was deleted due to fraud on January 31, 2023. (Paulson Decl. ¶ 31, Ex. E).

30. On February 2, 2023, Navy Federal sent an update to TransUnion instructing it to mask all credit bureau inquiries associated with the Account origination. (Paulson Decl. ¶ 32).

31. The Account was no longer reflected on the TransUnion February 3, 2023 credit report for Plaintiff. (TU 000151-TU000167, attached hereto as **Exhibit 4**).

32. On February 4, 2023, Navy Federal sent correspondence to Plaintiff advising him that Navy Federal honored his claim of identity theft, closed all active accounts, and notified all

major credit reporting agencies to remove all Navy Federal inquiries from his credit report due to fraud. (Miller Depo 23:18-24:10, Ex. 2).

Dated: January 12, 2024

Respectfully submitted,

/s/ Noelle P. Pankey

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 12, 2024, a true and correct copy of the foregoing was filed electronically using the CM/ECF system, which will provide notice to all counsel of record.

/s/ Noelle P. Pankey

Noelle P. Pankey, Esq.